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FEDERAL COMMUNICATIONS COMMISSION
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EX PARTE OR LATE FILED

Ms. Magalie Roman Salas,
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: "Reply" Comments of Media One
WT Docket No. 99-217, CC Docket No. 96-98 (Competitive Networks)
Ex Parte

Dear Ms. Salas:

Comments to the July 7 Notice of Proposed Rulemaking (NPRM) were due August 27. MediaOne did not file comments on that date. Replies to any comments filed on August 27 were due September 27. By waiting until September 27 to submit its initial pleading, MediaOne apparently hoped to insulate its response to the NPRM from public criticism in the scheduled reply round.¹ BellSouth submits this ex parte to respond to and to correct misstatements in MediaOne's September 27 filing.

¹ MediaOne filed a pleading styled "Reply Comments" in which it purported to respond to the NPRM. MediaOne Reply Comments at 1. MediaOne attacked BellSouth throughout its "reply," but did not refer to any portion of BellSouth's August 27 comments, instead referring to proceedings and anecdotes that happened before the NPRM's July 7 release date. The portions of MediaOne's "reply" that did not address comments filed on August 27 could have and should have been filed on August 27. This would have provided BellSouth and others an opportunity to respond in their reply comments.

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1. MediaOne Mischaracterizes the Commission's Rules.

MediaOne misstates the scope of the Commission's regulations without good ground:

*"Under the Commission's current rules, 47 C.F.R. § 68.3(b)(2), competitive LECs are entitled to nondiscriminatory access to the wire pairs at an MPOE in any building where the wiring was installed after August 13, 1990, unless the building owner decides to place the demarcation point at another location or establish separate points for each unit within the building."*²

The Commission's rules state nothing of the sort. The regulation cited by MediaOne says nothing about "competitive LECs" or "nondiscriminatory access" or "wire pairs." The rule states simply that LECs *may* establish a nondiscriminatory MPOE policy and that, in the absence of such a policy, building owners "shall determine whether there shall be a single demarcation point location for all customers [in a Multiple Tenant Environment (MTE)] or separate such locations for each customer."³

Thus, MediaOne's September 27 characterization of the MTE demarcation rule is wrong. When a LEC establishes an MPOE demarcation policy under the Commission's rules, nothing in the rule gives it or any other telephone company an independent federal right of access to either the building or to any intrabuilding wire. If it were not so, there would have been no need for the NPRM to seek comment on whether the Commission has the legal authority to compel such access.

MediaOne's melding of the concepts of nondiscriminatory access to intrabuilding wire and the Commission's MTE demarcation rule is characteristic of the tactic it is simultaneously pursuing before this Commission and various state commissions. These issues are currently pending before at least two state commissions in BellSouth's region in the context of interconnection arbitration between MediaOne and BellSouth. BellSouth has provided expert testimony in the record of each state proceeding that shows that BellSouth's MTE demarcation practices are consistent with the FCC's rules, and that BellSouth provides MediaOne with reasonable and nondiscriminatory access to intrabuilding wiring it controls.⁴ In this proceeding, BellSouth explained in its filed comments and reply comments how its demarcation practices are consistent with the Commission's rules, and how the availability of unbundled subloop intrabuilding MTE wiring obviates any need to change BST's existing network demarcation points in order to facilitate competitive access to those facilities.

² MediaOne Reply Comments at 3-4 (emphasis added).

³ 47 C.F.R. § 68.3(b)(2).

⁴ Although there is no need to burden the record of this proceeding with the transcripts of such expert testimony, BellSouth is willing to provide the Commission with copies of the transcripts on request.

2. BellSouth's Demarcation Policies are Consistent with the Commission's Rules.

MediaOne further states that building owners rarely understand the significance of the decision to place a demarcation point beyond the MPOE.⁵ This generalization is untrue. The current rule allowing LECs the flexibility to require building owners to submit to MPOE demarcation was adopted nearly a decade ago at the behest of some LECs and over the strident objections of many building owners. Building owners feared that LECs adopting such policies would force them to the expense and trouble of provisioning and maintaining intrabuilding wire communications facilities that had been provided and maintained as part of the LECs' regulated networks (as distinguished from simple inside wire, which had already been deregulated). Because BellSouth has not established a mandatory MPOE policy, building owners in the South have been free to determine whether there shall be a single demarcation point location for all customers in an MTE or separate demarcation point locations for each customer.

BellSouth has explained in its comments, reply comments, and in testimony filed in numerous state proceedings that over the past nine years the majority of building owners in BellSouth's operating territories have agreed that BellSouth should provide and maintain the necessary intrabuilding cabling and related network facilities beyond the MPOE to separate demarcation point locations for each customer. There is nothing about this practice that is inconsistent with the Commission's rules; in fact, this practice is fully compliant with the letter and the spirit of the rule. Indeed, in areas where LECs have adopted MPOE policies, building owners are, in fact, precluded from designating separate demarcation point locations for their tenants as they would be otherwise expressly permitted to do under the Commission's rules. BellSouth's practice thus preserves the building owner's flexibility to determine whether, in an MTE, there shall be a single demarcation point or separate demarcation points for each tenant.

3. The Commission Need Not Alter its Current Demarcation Rules in Order to Facilitate MTE Subloop Access.

MediaOne further states in its "reply" that "the current rules enable the incumbent LECs to deny rivals truly non-discriminatory access to an MPOE at an MDU," and requests that the Commission "clarify the demarcation rules, as suggested by the NPRM, to ensure that building owners make an affirmative choice. . . ."⁶ The NPRM contains no proposed or suggested clarification along the lines MediaOne purports to find in paragraph 65 of the NPRM.⁷ Indeed, paragraph 65 acknowledges, correctly and succinctly, that under the Commission's current rules, the demarcation point in multiple unit premises may be established at any number of places depending on the date the wiring was installed, the local carrier's reasonable and nondiscriminatory practices, and the property owner's preferences. Building owners in BellSouth's operating territories

⁵ MediaOne Reply Comment at 4.

⁶ *Id.*

⁷ *Id.* at n. 9.

have long been making affirmative choices between single or separate demarcation points. This is a request for a rulemaking that the Commission should deny.

Of course, in paragraph 67 of the NPRM, the Commission asks whether the definition of the demarcation point is in fact affecting competitive providers' access. Even if MediaOne was only a little loose with its citations to the NPRM, it has not provided the "specific" evidence requested by the Commission at paragraph 67 as to how the current demarcation definition may affect access. MediaOne does not complain that it has ever been refused permission by a building owner to place its facilities within a building. MediaOne, like most building owners BellSouth works with, would rather not go to the expense of establishing an intrabuilding network.

MediaOne is free under the Commission's rules to provide and maintain its own network facilities (whether owned or leased) to separate demarcation point locations, or to establish its own MPOE policy, and require building owners to provide the intrabuilding facilities (whether owned or leased) between the MPOE and the building tenants. While establishing its own network, or purchasing an unbundled subloop element from an ILEC may cause MediaOne to incur some expense, this is simply the reasonable cost of doing business in MTEs and is not evidence of an "access" problem. MediaOne does not complain that BellSouth, or building owners, deny it access to intrabuilding facilities. It merely complains about having to pay for using facilities that belong to others.

In fact, BellSouth has made its network terminating wire (NTW) and intrabuilding cable available to MediaOne on reasonable terms and conditions. MediaOne has been unable to persuade any state commission that BellSouth is doing anything wrong with respect to its demarcation or subloop unbundling practices. The last three full pages of MediaOne's reply are an attempt to reprise issues that have already been litigated or are being litigated by MediaOne and other competitive LECs in BellSouth's operating territories.

Moreover, the Commission's recent *UNE Remand Order* reveals the extent to which MediaOne's demarcation complaints are really a stalking horse for the issue of competitive access to embedded intrabuilding facilities. In that order, the Commission appears to have taken action that obviates the need to change its current demarcation rule:

Although we do not amend our rules governing the demarcation point in the context of this proceeding, we agree that the availability of a single point of interconnection will promote competition. . . . If parties are unable to negotiate a reconfigured single point of interconnection at multi-unit premises, we require the incumbent to construct a single point of interconnection that will be fully accessible and suitable for use by multiple carriers. Any disputes regarding the implementation of this requirement, including the provision of compensation to

the incumbent LEC under forward-looking pricing principles, shall be subject to the usual dispute resolution process under section 252.⁸

Thus, to the extent MediaOne seeks a point of interconnection in order to obtain access to BellSouth's intrabuilding network plant, the Commission has stated that parties must negotiate for any subloop reconfigurations that may be necessary. There is no need, therefore, to move previously established demarcation points in order to ensure the access which the *UNE Remand Order* now requires.⁹

4. MediaOne's Complaints Against BellSouth are Meritless.

MediaOne raises a litany of issues it has raised and continues to raise in state interconnection proceedings. Even before the *UNE Remand Order*, BellSouth offered MediaOne network terminating wire and other intrabuilding network facilities as UNEs. BellSouth is in negotiations with MediaOne for new interconnection agreements in Florida and Georgia, and until recently was party with MediaOne to an interconnection agreement in Georgia. The terms and conditions that MediaOne complains about in this "reply" are the subject of those negotiations. The *UNE Remand Order* makes clear that this is the appropriate context in which to resolve MediaOne's issues.

BellSouth's carrier of last resort obligations and its mission of outstanding customer service motivate BellSouth's demarcation policies. There is nothing unreasonable about them. BellSouth's standard method of unbundling subloop facilities is to set up a common cross connect point between the CLEC's facilities and the

⁸ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, CC Docket No. 96-98 (November 5, 1999) at ¶ 226. *See also* ¶ 224 ("Our approach to subloop unbundling permits evaluation of the technical feasibility of subloop unbundling on a case-by-case basis, and takes into account the different loop plant that has been deployed in different states. We find that the questions of technical feasibility . . . are fact specific. Such issues . . . are best determined by state commissions, because state commissions can examine the incumbent's specific architecture and the particular technology used over the loop. . . . We also note we are considering legal issues regarding access to premises in the *Access to Competitive Networks* proceeding.")

⁹ The Commission should reject MediaOne's request to use the Competitive Networks proceeding to "fill in the gaps" of the UNE Remand Order. MediaOne Reply Comments at 7. Any specific problems with unbundling should be dealt with in the UNE remand proceeding, and particularly through clarifications or reconsideration of that order. The Commission should also be wary of MediaOne's use of the term "inside wiring." *Id.* at 3, n. 4. The term "inside wire" is commonly used to denote previously deregulated and detariffed "Customer Premises Wiring" as defined at 47 C.F.R. § 32.2321. The facilities MediaOne describes as "inside wiring" are actually regulated intrabuilding network cable as defined at 47 C.F.R. § 32.2426. The fact that regulated network plant might be located indoors does not transform that plant into deregulated "inside wiring."

BellSouth facilities that are to be unbundled. This allows for the cross connection of the two companies' cable pairs while ensuring that neither entity is required to handle the other's facilities. Such a practice creates a clear demarcation between BellSouth's network and the CLEC's network, eliminating any possible confusion as to which party is responsible for what equipment or facilities.¹⁰ If a CLEC controlled subloop facilities in an MTE, BellSouth would agree to abide by the same procedures if it needed to obtain use of the CLEC's unbundled facilities.

The presence of a BellSouth technician is necessary to initially provision BellSouth's unbundled subloop service and to ensure that customer service is not disrupted. BellSouth provided specific evidence of such service outages in its reply comments. In the real world, service technicians are, and will continue to be, tempted to take the path of least resistance. That is, they will use whatever wires they find on the premises to provision a current service order without regard to the consequences to preexisting service arrangements. Thus, where BellSouth's customer service may be impacted, it must establish and maintain policies and procedures to ensure that third parties will not, regardless of intent, disrupt existing customer service.

If MediaOne wanted to avoid multiple service visits by a BellSouth technician to a property in order to provision unbundled subloops, MediaOne could order several wire pairs (if spare capacity exists) on the same service request. Pre-wiring a sufficient number of wire pairs would obviate the need for subsequent calls to BellSouth or subsequent service visits by BellSouth technicians. MediaOne has until now been unwilling to pay BellSouth for such pre-wired connections.

MediaOne wants to be able to help itself to BellSouth's existing intrabuilding network facilities without any notification, compensation or service quality obligations. What MediaOne appears to be after is the right to open BellSouth terminals and access BellSouth's network in order to break existing interconnections and cross connect to their own facilities without BellSouth supervision. BellSouth simply cannot ensure the quality of its network service if other parties have unchecked access to that network. Moreover, BellSouth would not know when to seek appropriate compensation for such access.

¹⁰ The "common cross-connect arrangement" described by MediaOne is only relevant to the simplest copper installation, and does not take into account the sophistication of new installations. In any event unbundling subloop elements, as the Commission has apparently undertaken and which MediaOne can already do with respect to BellSouth's facilities, obviates the need for any additional cross-connect arrangements. The Commission has, in the *UNE Remand Order*, established a process for negotiating any necessary reconfigurations and compensation for interconnections to establish subloop access. The Commission need not change its demarcation rules, nor adopt any of MediaOne's proposals.

Please contact the undersigned should you have any questions. In accordance with Sections 1.1206 and 1.419, I am filing two copies of this notice in both of the above-referenced proceedings. Please place this notice in the records of both matters.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ben G. Almond". The signature is written in a cursive, flowing style with a large initial "B" and "A".

Ben G. Almond